IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 11, 2005

STATE OF TENNESSEE v. JASON J. MELTON

Direct Appeal from the Circuit Court for Cannon County
No. F20-37 James K. Clayton, Judge

No. M2004-00714-CCA-R3-CD - Filed August 23, 2005

A Cannon County Circuit Court jury convicted the appellant, Jason J. Melton, of aggravated robbery, aggravated burglary, and escape, and the trial court sentenced him to ten, six, and two years, respectively, in the Department of Correction (DOC). The trial court ordered the appellant to serve the ten-year and six-year sentences consecutively but ordered that he serve the two-year sentence for escape concurrently to the other two sentences for an effective sentence of sixteen years in the DOC. In this appeal, the appellant claims (1) that the evidence is insufficient to support the convictions and (2) that he should have been tried for the escape charge separately from the remaining charges. Upon review of the record and the parties' briefs, we affirm the appellant's convictions. However, because the sentence for escape must be served consecutively to the other two sentences, we remand the case for entry of a corrected judgment as to that offense.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court are Affirmed in Part, Modified in Part, and Case Remanded.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

William H. Bryson, Woodbury, Tennessee, for the appellant, Jason J. Melton.

Paul G. Summers, Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; and Tommy P. Thompson, District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

Bobby Waynick testified that in April 2000, he lived on Blair Branch Road in Cannon County. On April 11, 2000, he got home from work about 3:00 p.m. and noticed a car parked in his driveway. A young woman ran up to his truck and said "they were lost and trying to find their way to Murfreesboro." Mr. Waynick noticed that the woman's car had a DeKalb County license plate.

He said that he knew she was not lost and that he asked her what she was doing there. Suddenly, a man with a shotgun jumped out of the woman's car, began yelling at Mr. Waynick, and told Mr. Waynick to give him his wallet. Mr. Waynick threw his wallet on the ground, got in his truck, and drove away. He said that he recognized the shotgun as his.

The woman and the man got back into the woman's car and began following Mr. Waynick. As Mr. Waynick looked in his rearview mirror, he saw the woman's car swerving back and forth, trying to pass his truck. Mr. Waynick also saw the man lean out of the car window and heard a gunshot. When Mr. Waynick got to a one-lane bridge on Blair Branch Road, he blocked the bridge with his truck, jumped out of the truck, and ran to Kim Markham's house nearby. Ms. Markham telephoned the police. While Ms. Markham was on the telephone, Mr. Waynick looked out a window and saw the young woman and a second man looking in his truck. The two of them got back into the woman's car and drove away.

Mr. Waynick testified that the police arrived about ten minutes later, told him to stay at Ms. Markham's house, and left to investigate. When the officers returned, they told Mr. Waynick that they had found a young woman and two men but that the men had fled on foot. Mr. Waynick told the police that one of the men had shot at him, and an officer found an empty shotgun shell on Blair Branch Road. Mr. Waynick and the police then returned to Mr. Waynick's home, which was "in shambles." Mr. Waynick discovered that his wife's jewelry box was empty. Although Mr. Waynick and the officers found a pillowcase with some of his wife's jewelry in it, a tie tack and a silver compact were missing. The police found an insurance card with the name "Katherine Willougby" printed on it inside Mr. Waynick's house. The police searched the area around Mr. Waynick's home and found his wallet on a nearby hill. The next morning, Mr. Waynick walked up the hill with his daughter and found his driver's license.

Deputy Jeffrey Scott Newberg testified that in April 2000, he worked for the Cannon County Sheriff's Department. About 3:00 p.m. on April 11, he and Deputy Kenny Wetzel were dispatched to Blair Branch Road. When they arrived, Deputy Newberg saw Mr. Waynick's truck blocking a bridge. Mr. Waynick came out of a nearby home and talked to the officers. After Mr. Waynick moved his truck, the officers drove toward Mr. Waynick's house. They saw a white Chevrolet Cavalier traveling toward them, stopped the car, and arrested the female driver. The woman told the officers that she had dropped off her passengers near Mr. Waynick's home. The officers searched a hill near Mr. Waynick's house and found his social security card, fishing license, and wallet. They looked for the two male suspects for about one and one-half hours but could not find them. The officers then returned to Mr. Waynick's home and allowed him to go inside to see if any items were missing. Drawers in the house were open, and the house "had been rummaged through totally." Inside the home, the officers found an insurance card with the name "Katherine Willoughby" printed on it. Deputy Newberg stated that the appellant and Jesse Harris were suspects in the case. At some point, he learned that the two men had been arrested after a brief standoff in DeKalb County. When the suspects were returned to Cannon County, Deputy Newberg searched the appellant's pockets and found a tie tack with a "W" on it.

Katherine Michelle Melton, the appellant's wife, testified that on April 11, 2000, she, the appellant, and Jesse Harris, went to the victim's home on Blair Branch Road. They pulled into the victim's driveway, and the two men went into the victim's home while Mrs. Melton waited in the car. As the men were coming out of the home, the victim's truck pulled into the driveway. Mrs. Melton got out of the car and told the victim they were lost. Mr. Harris was sitting in the front seat of Mrs. Melton's car and was holding a gun that he had taken from the victim's home. The appellant was lying down in the backseat, and a second gun was in the backseat. While Mrs. Melton was talking to the victim, Harris got out of the car. Mrs. Melton stated that she did not remember what Harris said to the victim. When the victim got in his truck and drove away, Mrs. Melton and Harris got back into her car and began following the victim's truck. While Mrs. Melton was driving, Harris leaned out of the car window and shot at the victim. The victim parked at a bridge, got out of his truck, and ran. The appellant or Harris got out of Mrs. Melton's car and looked in the victim's truck to see if the keys were inside. The three of them then drove back toward the victim's home, but the road was a dead-end. At some point, Harris and the appellant got out of Mrs. Melton's car and ran into the woods. The police arrived and arrested Mrs. Melton.

Mrs. Melton testified that the appellant wrote letters to her while they were in jail. In the letters, the appellant asked her to say that he was not at the victim's home. Mrs. Melton testified that she gave the letters to the Tennessee Bureau of Investigation (TBI) and that she would not lie for the appellant or Harris. Mrs. Melton identified her insurance card recovered from the victim's home and said that Willoughby was her maiden name. She also said that the appellant carried the insurance card in his wallet.

Chief Deputy Patrick Ray of the DeKalb County Sheriff's Department testified that at about 7:30 p.m. on April 11, the sheriff's department received a call from Sandy Boles. According to Mrs. Boles, her husband had driven two men to DeKalb County. In response to the telephone call, Deputy Ray went to the appellant's father's trailer. The police asked the appellant and Harris to come out of the trailer, but they refused. When they would not come out, Deputy Ray broke out a window and threw a Mace grenade inside. The appellant and Harris came to the trailer door, and the police arrested them. In the trailer, the police found a loaded gun on the floor and a loaded gun under the couch. The police also found some jewelry.

Special Agent Shelly Betts of the TBI testified that she was assigned to the TBI's firearm identification unit. She received the victim's shotgun and an empty shotgun shell that had been recovered from Blair Branch Road. Agent Betts test-fired shotgun shells from the gun and compared them to the empty shotgun shell. Agent Betts concluded that the empty shotgun shell was fired from the victim's shotgun.

William H. Avery, Sr., Chief of Police for the Woodbury Police Department, testified that he lived about one mile from the victim's home on Blair Branch Road. On the afternoon of April 11, 2000, he was on duty and heard Deputy Scott Newberg say over the police radio that there had been a break-in and shots fired on Blair Branch Road. Chief Avery went to the scene and saw the victim's truck blocking a bridge. The victim moved his truck in order for Chief Avery to get his car

through. Chief Avery then went to the victim's home and helped Deputy Newberg search the area. The officers found some of the victim's credit cards and his wallet near the home. The officers also found a sweater hanging on a fence.

Charles Wilder, a Cannon County deputy sheriff, testified that on April 11, 2000, he went to the victim's home and secured the area. Later that night, he went to DeKalb County because he had been notified that DeKalb County police had arrested the appellant and Harris. On May 9, 2000, the appellant and Harris were being held in a "prisoner detention room" at the Cannon County courthouse. He acknowledged that the room was guarded at all times and that sometimes a lot of prisoners were in the room. At some point, the officers discovered that the appellant and Harris were missing from the room. Deputy Newberg and Deputy Wilder secured the courthouse and began an internal search. Deputy Wilder saw the appellant come out of the courthouse and took him into custody. Officers later found Harris hiding in a storage closet in the courthouse basement. On cross-examination, Deputy Wilder testified that the appellant and Harris were wearing shackles and handcuffs when they were apprehended.

Mark West, the appellant's father, testified for the appellant. West stated that on April 11, 2000, the appellant was wearing a pair of Adidas shorts. He said that he sometimes washed the appellant's clothes and that the shorts did not have pockets. He stated that the appellant had stolen things from him in the past but that he had never known the appellant to break into houses.

Jesse James Harris testified that in January 2002, he pled guilty to aggravated robbery, aggravated burglary, and aggravated assault. An escape and an arson charge were dismissed. Harris stated that on April 11, 2000, he, the appellant, and Katherine Melton were traveling on Blair Branch Road. The appellant was lying in the backseat of Mrs. Melton's car. They drove to the victim's home, and Harris went inside and started taking items from the house. Harris stated that he did not remember if the appellant went inside the victim's home. When the victim's truck pulled into the driveway, Harris jumped out a back window and got into Mrs. Melton's car. He told her to tell the victim that they were lost. Mrs. Melton got out of the car and began talking to the victim. Harris, who had a gun, also got out of the car and told the victim to give Harris his wallet. Harris stated that the appellant was asleep in the backseat. He said that the victim drove away and that Mrs. Melton began following the victim. He said that Mrs. Melton tried to pass the victim's truck but that the victim would not let her pass. Harris then tried to shoot out the truck's tire so that Mrs. Melton could pass the victim's truck. When they got to a bridge, the victim parked his truck across the bridge, got out of the truck, and ran. Harris got out of Mrs. Melton's car and looked in the truck to see if the keys were in it.

On cross-examination, Harris testified that he was trying to testify truthfully but that his memory was bad because he had been "messed up" on methamphetamine at the time of the crimes. He said that the appellant also was addicted to methamphetamine and that he did not know how Mrs. Melton's insurance card got in the victim's home. He acknowledged that he stole in order to support his methamphetamine habit and that he had prior burglary convictions in Wilson and DeKalb Counties. He related that he did not remember any jewelry being in the victim's home. On redirect

examination, he acknowledged that it was possible Mrs. Melton dropped off the appellant before they went to the victim's home.

The then twenty-two-year-old appellant, who represented himself at trial, testified that he was "wigged out on dope" the day before the crimes in question. He said that on April 11, he, his wife, and Harris began driving to Lavergne, Tennessee. He said that at some point, his wife stopped the car, let him out, and drove away. He said that he walked up a hill, took his sweater off, and "shot up" methamphetamine. He then heard a gunshot and a car approaching. His wife pulled up in her car, and Harris got out. The appellant stated that Harris was carrying two guns and told the appellant that "he had killed his friend." Harris and the appellant walked up a hill, and Harris threw some paper on the ground. When they got to a house, a woman came to the door, and the appellant asked her if he could make a telephone call. The appellant also told the woman they were lost. When the woman's husband got home, he drove them to the appellant's father's house. At the house, the appellant fell asleep. He said that he heard a "pop" and began gagging. He said that he also heard the police tell him to come out of the house with his hands up. The appellant stated that he and Harris went outside, that the police searched them, and that the police took them to the police department.

On cross-examination, the appellant testified that he did not go into the victim's home. He acknowledged having prior convictions for aggravated burglary and theft and stated that he was on probation when he committed the current offenses. He acknowledged that he wrote letters to his wife while they were in jail and that he asked his wife to say he did not go into the victim's home. The jury convicted the appellant of aggravated robbery, a Class B felony, aggravated burglary, a Class C felony, and escape, a Class E felony, and the trial court sentenced him to an effective sixteen-year sentence.

II. Analysis

A. Sufficiency of the Evidence

When an appellant challenges the sufficiency of the convicting evidence, the standard for review is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); Tenn. R. App. P. 13(e). On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions concerning the credibility of witnesses and the weight and value to be afforded the evidence, as well as all factual issues raised by the evidence, are resolved by the jury as trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh or reevaluate the evidence. Id. Because a jury conviction removes the presumption of innocence with which a defendant is initially cloaked at trial and replaces it on appeal with one of guilt, a convicted defendant has the burden of demonstrating to this court that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

1. Aggravated Burglary and Aggravated Robbery

Aggravated burglary occurs when a person enters a habitation without the effective consent of the owner with the intent to commit a theft. Tenn. Code Ann. §§ 39-14-402(a)(1), -403(a). As charged in the indictment, aggravated robbery is "the intentional or knowing theft of property from the person of another by violence," accomplished with a deadly weapon. Tenn. Code Ann. §§ 39-13-401(a), -402(a)(1).

Regarding the aggravated burglary, the appellant contends that the evidence does not show that he entered the victim's home. However, taken in the light most favorable to the State, the evidence is sufficient. Katherine Melton testified that she drove Harris and the appellant to the victim's house and that the two men went inside. Moreover, the police found Mrs. Melton's insurance card in the victim's home, and Mrs. Melton testified that the appellant carried the card in his wallet. Finally, the victim testified that a tie tack was missing from the home, and Deputy Newberg stated that he found a tie tack with a "W" on it in the appellant's pocket. Although the appellant testified that he did not go into the victim's house, the jury accredited the State's witnesses. The evidence is sufficient to support the appellant's conviction for aggravated burglary.

The appellant also claims that the evidence is insufficient to support the aggravated robbery conviction because the evidence does not show that he participated in the taking of the victim's wallet or that he "shared in the fruits" of the crime. However, "[a] person is criminally responsible as a party to an offense if the offense is committed by the person's own conduct, by the conduct of another for which the person is criminally responsible, or by both." Tenn. Code Ann. § 39-11-401(a). In addition, one is criminally responsible for an offense committed by another when, "[a]cting with intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense, the person solicits, directs, aids, or attempts to aid another person to commit the offense." Tenn. Code Ann. § 40-11-402(2).

In the instant case, the evidence reveals that after burglarizing the victim's home, the appellant and Harris got back into Mrs. Melton's car. While the appellant hid in the backseat, Harris told Mrs. Melton to tell the victim they were lost. As Mrs. Melton was talking to the victim, Harris got out of the car, pointed a shotgun at the victim, and demanded his wallet. During this episode, the appellant remained concealed in the backseat. Mrs. Melton, the appellant, and Harris then followed the victim, trying to pass him on Blair Branch Road. When the victim blocked their exit, the group returned to the area near the victim's home. Mrs. Melton dropped off the appellant and Harris, and the two of them walked to Mrs. Boles' house. Mrs. Boles' husband later drove the two men to the appellant's father's home. Although the evidence shows that the appellant himself did not rob the victim, the evidence demonstrates that the appellant and Harris participated in the aggravated burglary together, followed the victim together, and fled the scene together. We hold that the evidence is sufficient to show that the appellant was criminally responsible for Harris' robbing the victim. See State v. Carson, 950 S.W.2d 951, 956 (Tenn. 1997) (holding that "the evidence was sufficient to find that the defendant, having directed and aided in the aggravated robbery with the

intent to promote or benefit from its commission, was criminally responsible for all of the offenses committed by his co-defendants").

2. Escape

Next, the appellant claims that the evidence is insufficient to support his escape conviction because the Cannon County Courthouse is not a "penal institution." The State claims that the evidence is sufficient. We agree with the State.

Tennessee Code Annotated section 39-16-605(a) makes it "unlawful for any person arrested for, charged with, or convicted of an offense to escape from a penal institution." A "penal institution" is defined as "any institution or facility used to house or detain a person" who is convicted of a crime, adjudicated delinquent by a juvenile court, or "is in direct or indirect custody after a lawful arrest." Tenn. Code Ann. § 39-16-601(4). "'Custody' means under arrest by a law enforcement officer or under restraint by a public servant pursuant to an order of a court." Tenn. Code Ann. § 39-16-601(2).

The evidence shows that on May 9, 2000, the appellant was transported from the Cannon County jail to the Cannon County Courthouse. There, he was held in the "prisoner detention room," awaiting a hearing on the aggravated robbery and aggravated burglary charges. Deputy Sheriff Charles Wilder testified that the prisoner detention room was guarded at all times and that sometimes a lot of prisoners were held in the room. At some point, officers discovered that the appellant was missing. Obviously, the appellant was in the custody of the sheriff's department while he was in the room, which was used to house or detain suspects. We conclude that the evidence is sufficient to support the appellant's escape conviction.

B. Severance

Finally, the appellant claims that the trial court should not have allowed the escape charge to be tried with the other charges because the escape occurred twenty-eight days after the other offenses and was not part of a common scheme or plan. The State argues that the escape arose from the same criminal episode that began on April 11, 2000, and that, in any event, the appellant has failed to show how he was prejudiced by not having separate trials.

Initially, we note that in the appellant's motion for new trial, he claims that he filed a pretrial motion to sever the escape charge from the remaining charges and that the trial court granted his motion. However, our review of the appellate record reveals that the appellant filed a pretrial motion to sever his case from codefendant Harris' case. The trial court granted this motion. No other motions to sever are in the record on appeal. "Unless the defendant moves to sever the offenses prior to trial or at an otherwise appropriate time, the defendant waives the right to seek separate trials of multiple offenses." Spicer v. State, 12 S.W.3d 438, 443 (Tenn. 2000) (citing Tennessee Rules of Criminal Procedure 12(b)(5) and 14(a)). Because the appellant did not file a pretrial motion to sever the offenses, we hold that he has waived this issue.

III. Conclusion

Upon review of the record and the parties' briefs, we affirm the convictions. However, we note that in sentencing the appellant, the trial court ordered him to serve his two-year sentence for escape concurrently with his other sentences. Pursuant to Tennessee Code Annotated section 39-16-605(c), "[a]ny sentence received for [escape] shall be ordered to be served consecutively to the sentence . . . received for the charge for which the person was being held at the time of the escape." Therefore, we modify the judgment of conviction for escape to reflect that the sentence for that offense is to be served consecutively to the aggravated robbery and aggravated burglary convictions, for an effective sentence of eighteen years in confinement, and remand the case for entry of a corrected judgment.

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NORMA McGEE OGLE, JUDGE